

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:ILD:CHI:TL-N-3738-00

RAVillageliu

VIA HAND DELIVERED MAIL

date: June 27, 2000

to: Chief, Examination Division, Illinois District  
Attention: [REDACTED], Senior Team Coordinator  
Employee Identification No.: [REDACTED]

from: District Counsel, Illinois District

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subject: AO: Forms 872-P, Consents to Extend the Time to Assess  
Tax Attributable to Items of a Partnership

Partnership [REDACTED] EIN: [REDACTED]

TMP: [REDACTED]

EIN: [REDACTED].

Partnership Tax Years: Years ended December 31, [REDACTED] and [REDACTED]

TMP member of consolidated return group: Yes for both [REDACTED] & [REDACTED]

Consolidated group agent: [REDACTED] EIN: [REDACTED]

Non-Docketed Large Case Opinion: CEP.<sup>1</sup>

Enclosed you will find Forms 872-P to extend the TEFRA statute for the partnership's tax years [REDACTED] and [REDACTED]. These are restrictive consents, as taxpayer and the Service agreed. The restrictions have been set forth in the Forms 872-P, as appropriate.

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<sup>1</sup>A copy of this opinion is being sent to the national office for coordination purposes. This opinion is based on legal advice which the undersigned has received from the national office in somewhat similar cases in the past, general training materials, and on our own research and experience. However, this whole area of the law can be deceptive. It presents more complicated issues and practical solutions than a neophyte would expect. In a real sense, the area can be as complicated as the subject of corporate reorganizations, sales of stock or assets, and Tefra partnership provisions. Therefore, if the national office chooses to post-review this opinion, modifications to this opinion may result. If this occurs, you will be notified. We may do this by a simple telephone call or by supplemental memorandum, in order to provide you with timely advice, in an efficient manner. Absent notification of any such modifications, you may treat this opinion as final.

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The Tax Matters Partner ("TMP") in this case was a member of the [REDACTED] consolidated return for the two years at issue. On or about [REDACTED], the stock of the Tax Matter Partner was sold to an unrelated third party. The [REDACTED] group represents that none of the group member's has an interest in the Tax Matters Partner any longer. The group further represents that to the best of its knowledge the Tax Matters Partner remains in existence. See enclosed Memorandum dated [REDACTED], which is [REDACTED]'s response to the pertinent Service IDR [REDACTED]-[REDACTED] IRS Audit IDR [REDACTED]-023]. You will need to verify that this is the case, when you attempt to obtain the essential Tax Matter Partner's signature.

If the Tax Matters Partner has changed its name, you can modify the Forms 872-P to reflect this by placing the new TMP name followed by f/k/a and then, go forward with the old name. However, in our opinion, as long as the same corporation remains in legal existence (and the name change is only that, a name change), the consents will be valid, even without a reference to the new name.

The consents have been prepared for the signatures of both the Tax Matters Partner and the Tax Matters Partner consolidated return group agent for the tax years [REDACTED] and [REDACTED]. The essential signature that must be obtained is that of the Tax Matters Partner, but we very strongly recommend that you obtain both signatures, that of the TMP and that of its consolidated return group agent (parent) for [REDACTED] and [REDACTED].

The reason why both signatures are important is the following. When the TMP is a subsidiary of a consolidated filing group as in this case, a legal cloud arises. Subsidiaries are generally not able to bind the consolidated parent or the consolidated group in tax matters, given that the 872-P is a tax matter, an argument can be made that only the consolidated group agent is the proper party to sign. The Service does not believe that this argument is persuasive. The Service views the role of the Tax Matters Partner as nondelegable, therefore, the Service's position is that the actual TMP should execute the consent. To protect against challenges to the consent, however, the Service recommends that when the TMP is a subsidiary in a consolidated group, as the TMP was in [REDACTED] and [REDACTED] the signature of both the parent and the TMP be obtained. The consent should contain the signature of an officer of the subsidiary on the TMP line, and also the signature of an officer of the parent. A generic signature block for the parent is, as follows:

[Name of parent corporation][EIN] by [Name of authorized person and title], on behalf of [Name of subsidiary corporation][EIN], Tax Matters Partner of [Name of TEFRA partnership, EIN].

Because this case is a bit more complicated than the garden variety case in that the TMP, in addition to being a subsidiary of a consolidated group now is no longer a member of that consolidated group and probably is a member of an unrelated group for later years, the enclosed Forms 872-P have modified the generic language slightly. In our opinion, the language that we are recommending is legally effective and adds clarity.

A question arises whether the parent who signs the consent should be the parent during the years [REDACTED] and [REDACTED] (i.e., [REDACTED]), for which the consent is being given or the new parent of the TMP, in subsequent years. In our opinion, raising the question answers it. The new parent has absolutely nothing to do with the years [REDACTED] and [REDACTED]. Conversely, [REDACTED] remains in existence and the group's agent for all of the members of the [REDACTED] and [REDACTED] groups, including the TMP. It follows that, in our opinion, the parent signature that you need is that of [REDACTED].

Finally, we are enclosing a copy of a Memorandum for All Examination Branch Chiefs (except ESP) Illinois District on the subject of "Consents to Extend the Statute of Limitations - New Requirements under the IRS Restructuring and Reform Act of 1998 (RRA'98). If you have not done so already, you will want to familiarize yourself with it, and be sure to follow all requirements for obtaining consents. One of the concerns under the new law is that taxpayer be made aware that it is not obliged to extend the statute of limitations and that it can be mutually agreed to be extended only for limited matters (restrictive consents). Given [REDACTED]'s refusal to extend other statutes, not at issue in this instant opinion, and the fact that the Forms 872-P, that are the subject of the instant opinion are restrictive, we are confident that [REDACTED] knows its rights. However, as you deal with the TMP, you will need to ensure that you also satisfy the requirements of RRA'98 vis-a-vis the TMP.

#### Conclusion

This concludes our legal opinion in this case. We are closing our legal file in this matter. If you have further questions or need any clarifications, please contact the undersigned at (312) 886-9225, extension 308. As previously stated, if national office modifications or clarifications

result, from post-review of this opinion, we will inform you in the most appropriate manner.

RICHARD A. WITKOWSKI  
District Counsel

By: *Rogelio A. Villageliu*  
ROGELIO A. VILLAGELIU  
Special Litigation Assistant

Attachments: 1) Two Forms 872-P for  
years ended [REDACTED] & [REDACTED]  
2) Memorandum dated [REDACTED]  
3) February 8, 2000 memorandum  
from the Chief, Examination  
Division regarding New Requirements  
under the IRS Restructuring and  
Reform Act of 1998 (RRA'98); 4) Floppy  
Disc with corrected Forms 872-P.

[National office receives two copies of all  
attachments (but for floppy disc), others receive  
only copies of the Forms 872-P]

CC:District Counsel, Illinois District

CC:Assistant Regional Counsel (Large Case), MS (Chicago)

CC:Assistant Regional Counsel (TL), MS (Dallas)

CC:DOM:FS (2 copies, all attachments, except floppy)  
Attention: Attorney Lee T. Phaup (202) 622-7950

a: [REDACTED] A03738-00 [REDACTED].wpd